

STATE ARCHIVES AND RECORDS COMMISSION
Minutes of the Quarterly Meeting
September 8, 2005
Department for Libraries and Archives

The State Archives and Records Commission met at 10:00 a.m., Thursday, September 8, 2005, in the Board Room, Kentucky Department for Libraries and Archives (KDLA), 300 Coffee Tree Road, Frankfort, Kentucky.

Members present: James A. Nelson, Chairman; Paul F. Coates, representing Citizens-at-Large; James E. Horner, representing Citizens-at-Large; Lynn Hollingsworth, representing Citizens-at-Large; Dr. Jack D. Ellis, representing Citizens-at-Large; Terry L. Birdwhistell representing the University of Kentucky; Jennifer Gregory, representing regional colleges and universities; and Dean Johnson representing local governments.

Representatives present: Tim Harmon representing Virginia G. Fox, Secretary, Education Cabinet; Brandon Haynes, representing Joseph E. Lambert, Chief Justice, Supreme Court; Amye Bensenhaver, representing Gregory D. Stumbo, Attorney General; Bryan Lykins, representing Crit Luallen, Auditor of Public Accounts; Leslie Smith, representing Robert Sherman, Director, Legislative Research Commission.

Members not present or represented: Brad Cowgill, State Budget Director, Governor's Office of Policy and Management; Michael Inman, Commissioner of Technology, Commonwealth Office of Technology; James F. Kastner, representing the Kentucky Historical Society; Sandra L. McAninch, representing the Kentucky Library Association;.

Public Records Division staff present: Richard N. Belding, Director, Public Records Division; Jerry Carlton, Manager, Local Records Branch; Glen McAninch, Manager, Technology Analysis and Support Branch; Jim Cundy, Acting Manager, State Records Branch; Mark Myers, Electronic Records Specialist; Pamela Burris, Records Analyst; Thomas Getman, Records Analyst; Cynthia Snapp, Administrative Specialist.

Guests present: Scott Porter, Office of the Attorney General, Counsel to KDLA; Dale Fadley, Executive Director, Office of the Inspector General, Environmental and Public Protection Cabinet; Scott Hatfield, Office of the Inspector General, Environmental and Public Protection Cabinet.

Nelson called for introductions by those present.

Mr. Horner made a motion to accept the minutes of the previous Commission meeting, seconded by Ms. Hollingsworth. The vote by members and representatives present was unanimous.

NEW OR REVISED RECORDS RETENTION SCHEDULES

Commission on the Deaf and Hard of Hearing

Jim Cundy was the records analyst working on this revised schedule. The series being added are 05432, Telecommunication Distribution for the Deaf Program Client File; and 05433, Interpreter Reference Services -- Interpreter File. The series being deleted are 03143, Information Sheets; 03144, Quality Assurance Applicant File; 03145, Quality Assurance Scripts; 03146, Quality Assurance Videotapes; 03147, Directory of Services for the Deaf and Hearing Impaired; 03148, Interpreter Directory for the Deaf and Hearing Impaired; and 03149, KCDHI Communicator.

The Commission for the Deaf and Hearing Impaired was established in 1982, in accordance with KRS 163.500-163.520 and, in 1994, was renamed the Commission for the Deaf and Hard of Hearing. The Commission consists of fourteen members. Seven members are appointed by the Governor. Members who are not state officials serve for a term of three years. The Commission serves in an advisory capacity to the Governor and the General Assembly concerning policy and programs to enhance the quality and coordination of services for the deaf and hearing impaired in both the public and private sectors. Additionally, the Commission oversees the provision of interpreter services to the deaf and hearing impaired. The Commission also identifies and surveys public and private agencies that provide necessary services, as well as compiling needs assessment surveys and a census of the deaf and hearing impaired population.

Cundy noted that this is a complete revision of the schedule for the Commission on the Deaf and Hard-of-Hearing. The schedule had not been completely revised since September 1987. He noted that the entirety of the commission's old schedule was outdated, either because the body no longer served the function represented by those records or because those records are covered by records series on the General Schedule for State Agencies. The additions to the schedule document two current functions of the commission: (1) oversight of distribution of specialized telecommunications equipment to deaf and hard-of-hearing members of the community; and (2) oversight of the provision of sign language interpreters to state agencies.

Mr. Horner made a motion to adopt the schedule, seconded by Mr. Haynes. The vote by members and representatives present was unanimous.

County Clerk Records Retention Schedule -- Elections

Jerry Carlton was the regional administrator working on this addition. The series under consideration is L5834, Voter Registration Information Postcards (Inactive Voters).

Carlton noted that this series represents a post card sent to voters by the state Board of Elections to verify a voter's current residency as part of the purging process. The post card is then sent to the appropriate county clerk, who modifies voting lists as necessary. He said that the retention period of two years followed statutory requirements.

In response to a question by Chair Nelson, Mr. Johnson noted that these may represent a voluminous record in certain county clerks' offices.

Mr. Johnson made a motion to adopt the schedule, seconded by Ms. Hollingsworth. The vote by the members and representatives present was unanimous.

Registry of Election Finance

Cundy was the records analyst working on this addition. The series under consideration is 05440, Caucus Campaign Committee File.

The Registry of Election Finance was created by statute in 1966, as an independent agency to administer the statutes pertaining to political campaign and election financing (KRS 121.110). In 1992, the General Assembly enacted the Public Financing Campaign Act and transferred the agency from the Public Protection and Regulation Cabinet to the Department of State (Office of the Secretary of State). The seven members of the Registry are appointed, subject to Senate confirmation, by the Governor, Auditor of Public Accounts, Attorney General, and Secretary of State, in a bipartisan or nonpartisan manner for staggered four-year terms (KRS 121.110). The duties of the Registry include: 1) developing forms for required campaign financial reports; 2) publishing a manual for candidates, slates of candidates and committees, describing campaign finance requirements; 3) preparing and publishing various reports pertaining to receipts and expenditures in campaigns; 4) reviewing financial reports submitted by candidates, slates of candidates and committees, for legal compliance; 5) registering committees with the Registry; 6) conducting random audits of receipts and expenditures of local and district campaigns; 7) auditing receipts and expenditures of campaigns for all statewide offices; 8) initiating investigations of possible infractions of campaign finance laws; and 9) referring violations of election laws to the Attorney General or local prosecutor for civil and criminal prosecution, while reserving the right to petition the court to enable the Registry's attorney to prosecute if the Attorney General or local prosecutor does not proceed with the prosecution in a timely manner.

Cundy noted that SB 112, passed in the 2005 session of the General Assembly, eliminated taxpayer-funded gubernatorial campaigns in the Commonwealth and established Caucus Campaign Committees to facilitate private financial contributions and campaign expenses. This series represents statutorily mandated documentation of those committees by the Registry of Election Finance. He noted that retention period of six years is legally mandated and is in keeping with other files of this type maintained by the agency, such as Series 00922, Political Party Executive Committee File.

In response to a question by Mr. Lykins, Cundy noted that the record would be destroyed after six years, regardless of when an audit of these records was to take place. In response to a question by Ms. Bensenhaver, Cundy said the disposition instructions could be reworded to clarify that point.

Dr. Ellis made a motion to adopt the schedule addition, seconded by Mr. Haynes. The vote by the members and representatives present was unanimous.

Education Cabinet – Department of Workforce Investment – Office of Employment and Training – Workforce and Employment Services Division

Cundy was the records analyst working on this addition. The series under consideration is 05410, Work Opportunity Tax Credit/Welfare to Work File.

The Kentucky Office of Employment and Training is part of the Department for Workforce Investment. The work of the office falls into three broad areas: (1) Job Services is a labor exchange that matches available workers with employers who need their skills and experience. Work search and referrals may be conducted locally, statewide and nationally; (2) Unemployment Insurance provides short term benefits for those who are unemployed through no fault of their own; (3) Labor Market Information contains a wide range of statistical data on employment and wage patterns. It is available locally, statewide and nationally to both businesses and job seekers. The mission of the office is to provide qualified people for jobs, quality jobs for people, temporary financial support for the unemployed, comprehensive labor market information, and preserve the integrity and viability of the Unemployment Insurance Trust Fund, thus promoting the economic well-being of the Commonwealth.

Cundy noted that this series documents programs to allow tax credits to businesses for hiring from among specified classes of people, convicted felons, for example. He noted that the five year retention followed IRS guidelines and fulfilled administrative and audit needs.

In response to a question by Mr. Lykins, Cundy noted that the OET is undergoing a performance audit of their approval and disapproval of these tax credits.

Mr. Coates made a motion to adopt the schedule addition, seconded by Dr. Ellis. The vote by the members and representatives present was unanimous.

Commonwealth Office of Technology – Division of Geographic Information

Mark Myers was the records analyst working on this addition. The series being considered is 05431, Geographic Information System.

Nelson said that, after the meeting, there would be a demonstration of the system by McAninch and Myers.

Myers noted that this series represents the state's Geographic Information Systems (GIS) database. GIS is a means of representing text and information in reference to points on a map. He noted that there are various layers of two types of databases: the KY raster or baseline database includes images such as aerial photographs, topographic maps, and satellite images; the KY vector database includes the points and lines on the maps such as boundaries, power lines, or water lines, including any textual data that goes with these points. Often, the KY vector information is uploaded from other agencies. He noted preservation issues, mainly because of the size of the KY raster database. The raster database is not updated very frequently, however. The vector database is updated more frequently, though it is much smaller than the raster database. The disposition is worded to allow for periodic snapshots on intervals agreed on by KDLA and DGI. He said that no raster data has been removed from the database. There are still issues of storage space and access, both of which may be problematic for KDLA regarding the housing of information taken offline. Meeting

information taken offline. Meeting materials include a list of the layers.

In response to a question by Belding, Myers noted that some information may already be found on retention schedules of agencies that submit it, while other information is supplied by the federal government. This format allows for more constructive use of all data, however, especially in conjunction with other information. He noted that other states may have scheduled Geographic Information Systems, but none has accessioned them.

In response to a question by Commissioner Nelson, Myers noted that relevant state agency material would be encompassed in this system, or the system would at least link to that material. DGI is encouraging state agencies to allow uploading of their materials into DGI's system. A small number of local agencies are also part of DGI's system, though local agencies Geographic Information Systems are mainly independent of the state's system. The local agencies would not fall under this series, which is specifically for the Division of Geographic Information.

In response to a question by Mr. Coates, Myers noted that DGI staff does recognize the uses of this system to track changes over time as maps and data are laid over one another.

Mr. Horner made a motion to adopt the schedule addition, seconded by Ms. Hollingsworth. The vote by the members and representatives present was unanimous.

Environmental and Public Protection Cabinet – Office of the Inspector General – Division of Criminal Investigation – Division of Technical Support Executive Services

Cundy was the records analyst working on these schedule additions. The series being considered are 05419, Criminal Investigation Case File; and 05420, Executive Support Case File.

The Environmental and Public Protection Cabinet's (then Natural Resources and Environmental Protection Cabinet) Office of the Inspector General (OIG) was created by Executive Order in 1999, and codified in 2000 (KRS 224.10-025). OIG is responsible for investigations into violations of environmental laws and regulations that extend beyond the scope of field inspections. It provides support for and coordinates the cabinet's participation in investigations involving intra- and inter-agency organizations, sister states and federal authorities. OIG is also responsible for administrative investigations necessary for the effective and efficient management of the cabinet, to include personnel investigations.

Cundy noted that these records of administrative hearings held by the Office of Inspector General (OIG) had appeared before the commission on June 9, 2005, but had been tabled. He said that one concern of commission members and representatives was that there would be no long-term or permanent record of parties to administrative investigations by the OIG. This issue is addressed through an MS Access database maintained by the OIG that lists all parties to an investigation, along with a description of the case. The database is maintained permanently and will be scheduled in December. Another concern on the part of the commission is that, as investigatory techniques become more sophisticated, evidence presented in these investigations might lend itself to more rigorous and revealing analysis. The evidence in these investigations is mainly not of a forensic nature, but rather is of a more strictly documentary nature: photographs, testimony, etc.

testimony, etc. Furthermore, in the event of legal proceedings, any evidence that arises in the course of the administrative investigations will be turned over to the appropriate authorities (i.e., state police or the Federal Bureau of Investigation). He noted that the twenty-year retention of Series 05419, Criminal Investigation Case File followed Environmental Protection Agency guidelines. He also said that in the case of 05420, Executive Support Case File, any substantiated investigations would result in a record of any disciplinary action taken being placed in the appropriate individual's personnel file. Retention of unsubstantiated investigations for five years would allow for any patterns to emerge.

In response to a question by Mr. Horner, Dale Fadley, Executive Director of the OIG, noted that the database contains a synopsis of the case, dates, names of parties and investigators, resolution, judgments, and fines. Mr. Hatfield noted that any evidence of a forensic nature would not be maintained by OIG, but would be passed on to the proper authorities in the event of a court case.

Dr. Ellis made a motion to adopt these schedule additions, seconded by Mr. Haynes. The vote by the members and representatives present was unanimous.

Lexington/Fayette Urban-County Government Records Retention Schedule – General Services – Parks and Recreation/Public Safety - Police Department - Bureau of Investigation

Carlton was the regional administrator working on these schedule changes. The series being added are **(General Services – Parks and Recreation) L5830, Facilities Rental Agreement**; and **(Public Safety - Police Department - Bureau of Investigation) L5832, Crime Stoppers Informant File**.

Carlton said that L5830, Facilities Rental Agreement represent agreements on the rental of parks and recreation facilities. The two-year retention of Series L5832, Crime Stoppers Informant File is sufficient as Crime Stoppers itself maintains a record of informants and payments. He also noted that the retention of the Crime Stoppers records is in keeping with law-enforcement agencies in other states and localities.

In response to a question by Mr. Horner, Carlton noted that, despite Crime Stoppers' status as a private agency, it is still necessary to obtain confirmation from the appropriate police department to facilitate payment, thus necessitating creation of the record.

In response to a question by Dr. Ellis, Carlton said that the omission of this series was simply an oversight on the Lexington/Fayette Urban-County Government Retention Schedule and that LFUCG's schedule would continually be updated as necessary, as are all retention schedules.

Dr. Ellis made a motion to adopt the schedule additions, seconded by Mr. Haynes. The vote by the members and representatives present was unanimous.

Local Government General Records Retention Schedule – Common Records – Administrative/Parks and Recreation/Public Safety – Law Enforcement

Carlton was the regional administrator working on this change. The series being changed is L5373, Litigation File, from Permanent, to 10 years; the series being added are L5831, Facilities Rental Agreement (Reservation); and L5833, Crime Stoppers Informant File.

Carlton said that the retention period on L5373, Litigation File, was being changed after consultation with various local officials and reviewing litigation files on other retention schedules. In response to a question by Mr. Horner, he said that these are attorneys' working papers, not the case files, which would be maintained by courts.

Mr. Porter said that, given the contents of the file, the ten year period seemed appropriate to him. Ms. Bensenhaver concurred.

Cundy said that the retention of these files at the state level range from three years to permanent, with thirty-two years being the longest retention short of permanent. He noted that the most common retention is eight and twelve years.

Mr. Horner asked if exceptions were made for litigation files from historically important cases. Cundy responded that this is the case and offered the examples of bail-bonds-related litigation and Beverly Hills Supper Club Fire litigation, materials from which are maintained permanently in the Archives. He also noted that exceptions may be made for changes in policies, such as those at universities.

Carlton noted that the additions correspond to the earlier proposed changes to the Lexington/Fayette Urban-County Government Schedule.

Mr. Haynes made a motion to adopt the schedule change and additions, seconded by Ms. Hollingsworth. The vote by the members and representatives present was unanimous.

Local Government General Records Retention Schedule – Public Safety – Law Enforcement

Carlton was the regional administrator working on these changes. The series being considered are L4682, Juvenile Investigation Case File; and L4683, Juvenile Arrest File/Juvenile Arrest Form. Both are being changed from Indefinite, Destroy when subject becomes 23 years of age, to Indefinite, Destroy when expungement order is issued or at age 21, whichever comes first.

Carlton said that this change had been prompted by the complexity involved in management of juvenile records by local law enforcement personnel, because of both their confidentiality and the question of what constitutes expungement. He noted the vagueness of expungement law, and that it would be a great help to local law enforcement to be able to destroy these records upon receipt of an expungement order. In response to a comment by Mr. Haynes, Carlton noted again the vagueness of the law, and that records of felony cases for juveniles conducted in District Court are maintained for 75 years, and that the court files would be the records utilized once cases have been litigated.

Ms. Bensenhaver noted that she and Carlton both provide training to law enforcement officials and

and that she felt that clear guidance of this type would be helpful in addressing questions on the part of the officials. Carlton mentioned that change to this series had arisen from contact with law-enforcement officials at similar training sessions.

In response to a question by Hollingsworth, Carlton said that the change had arisen mainly to questions regarding expungement. Mr. Haynes said he felt 23 would be a more appropriate age, rather than 21, as that would better allow law enforcement agencies to protect themselves in the event of incident. Carlton agreed that destroying these records at age 23, or upon expungement order, would be acceptable rather than at age 21 or upon expungement order, as it would allow conformity with the court system.

Dr. Ellis made a motion to amend the disposition instructions to read "Destroy when expungement order is issued or at age 23, whichever comes first," seconded by Ms. Hollingsworth. The vote by the members and representatives present was unanimous.

Mr. Haynes made a motion to adopt the schedule changes as amended, seconded by Ms. Hollingsworth. The vote by the members and representatives present was unanimous.

Board of Pharmacy

Cundy was the records analyst working on this addition. The series being considered is 05430, Complaint File – Founded (Case File).

The Board of Pharmacy is responsible for the licensing of Pharmacists. The purpose of licensure boards is to license and regulate the statutorily designated occupations and professions, in order to protect the public health, safety and welfare. To accomplish this, boards have two primary areas of responsibility: licensure and enforcement. The licensure function deals with entry into the profession. In broad terms, the boards determine an individual's initial fitness and competency to practice an occupation or profession. Boards process applications for licensure, check qualifications against statutory requirements, administer licensing examinations and issue and renew licenses. The enforcement function involves tasks designed to assure that licensees continue to practice competently after initial licensure. Specifically, boards administer continuing education requirements, process complaints against licensed practitioners, conduct investigations, hold hearings and take disciplinary actions against incompetent or fraudulent practitioners. Disciplinary sanctions range from reprimands to license revocations. In performing certain enforcement functions, board members and representatives function in a quasi-judicial capacity.

Cundy said that this series represents substantiated complaints brought against licensed pharmacists or institutions. He noted that unfounded complaints are already on the board's retention schedule, while upheld complaints are not. He said that the Advisory Committee had asked about the retention of unfounded complaint files, which is three years.

Mr. Coates made a motion to adopt the schedule change, seconded by Mr. Horner. The vote by the members and representatives present was unanimous.

Public School District Retention Schedule – Special Education

Carlton was the regional administrator working on these additions. The series being considered are L5828, Psychology Report for Non-qualifying Students and L5829, Kentucky Continuous Monitoring Process (KCMP) Documentation.

Carlton noted that L5828, Psychology Report for Non-qualifying Students, documented students who have not qualified for special education. The three-year retention corresponds to that of the Special Education Due Process Student Folder, and would allow for students' attempts at requalification. He noted that even medical records are considered educational records under FERPA. He said that L5829, Kentucky Continuous Monitoring Process (KCMP) Documentation, documents the tracking of progress of special education students by local districts, as mandated by KDE. This material is supporting documentation for a district improvement plan, a permanent record, which is transmitted to KDE. The five-year retention allows for audit. In response to a question by Dr. Ellis, Carlton said that students could move out of special education programs and the KCMP material was designed to track their progress.

Dr. Ellis made a motion to adopt the schedule additions to the Commission for their approval, seconded by Mr. Haynes. The vote by the members and representatives present was unanimous.

Department of State Police – Electronic Crimes

Cundy was the records analyst working on this addition. The series being added is 05434, Electronic Crimes Forensic Analysis File.

The Department of State Police was formed on July 1, 1948, when legislation was signed giving its officers full police powers, both traffic and criminal. All offices, facilities, equipment, duties, powers and funds of the State Highway Patrol were transferred to the Department. In 1956, the Department was abolished and it became the Division of Kentucky State Police in the Department of Public Safety. From 1973 to 2004, it was part of the Justice Cabinet. In 2004, the Department became part of the Justice and Public Safety Cabinet, by order of the Governor. Its duties and powers are contained in KRS Chapter 16. KRS 16.060 details the duties and powers of the Commissioner and officers of the Kentucky State Police. It is the duty of the Commissioner and each officer of the Department to detect and prevent crime, apprehend criminals, maintain law and order throughout the state, collect, classify and maintain information useful for the detection of crime and the identification, apprehension and conviction of criminals, and enforce the criminal as well as the motor vehicle and traffic laws of the Commonwealth. The KSP must also provide security of state facilities located in Frankfort, highway enforcement, and water safety enforcement, as provided in KRS Chapter 235.

Cundy said that the Electronic Crimes Branch of the Department of the State Police investigated crimes involving some sort of electronic media, such as computers. One of the responsibilities of the branch is to conduct forensic analyses of electronic media, as requested by the KSP or other law-enforcement agencies. This series represents a copy of the original media being analyzed and a copy of the report issued after forensic analysis is conducted on that media. The originals of these would be with the requesting agency and thereby available for any litigation. They would be

would be destroyed at the discretion of a judge if they become exhibits in a court case. In response to a question by Belding, Cundy said that the three years begins after the report is completed. He said that, as suggested at the Advisory Committee, he could include language in the schedule entry itself to the effect that ultimate disposition of the original is determined by the appropriate judge.

Mr. Coates made a motion to adopt the schedule change, seconded by Dr. Ellis. The vote by the members and representatives present was unanimous.

The next item was **Other Business**.

Belding noted the passing of Dr. Thomas D. Clark, whose service on the commission entailed all but five years of the life of that body until his passing. He noted the centrality of Dr. Clark to passage of Kentucky's public records laws and in relation to the work of agencies that oversee its public records management. He suggested that commission staff draft, for Mrs. Clark and his children, a resolution of appreciation for Dr. Clark's service on the commission, and that the commission adjourn today, 8 September 2005, in Dr. Clark's honor. Dr. Ellis noted that Dr. Clark's service extended long before the establishment of the commission.

Ms. Hollingsworth made a motion that a resolution of appreciation for Dr. Clark be drafted and forwarded to his widow and children, seconded by Dr. Ellis. The vote by the members and representatives present was unanimous.

Belding offered an update on the department's a capital construction request. He noted that the shelving currently in the department's lobby. The shelving was placed in the lobby to allow the shifting of Braille volumes from the building's second level. Books-on-tape would be moved from the third level to the second level to make room for additional archival shelving on the third floor. He said that the construction request had been presented by Secretary Fox to the Capital Planning Advisory Board in July and that the CPAB would announce its construction priorities by 1 November. He also noted coverage in the *State Journal* that had helped the department's case for funding.

Belding said that Kentucky's Archives Week was coming up the week of October 9-15. The purpose of Archives Week is to raise public awareness of the work of archivists and archival institutions. He said that commission members would be receiving more information and that they could consult the Archives Week website at <http://archivesweek.ky.gov/>.

Belding noted the requirements of House Bill 77, passed in the most recent legislative session, which requires the dissemination by the Attorney General's Office of material explaining public records management responsibilities to local public officials and the presidents of postsecondary educational institutions. The department would soon be finalizing material to be forwarded to the Attorney General's Office to be disseminated to the appropriate officials. He called attention to the educational opportunity that the bill presented, not only for local agencies but also for state agency personnel.

In response to a question by Mr. Horner, Belding noted that Buffalo Trace Distillery, where the department leases approximately 70,000 square feet of space for records storage, would not be making any significant alterations to current arrangements in the immediate future.

Mr. Haynes made a motion that the commission adjourn that day in the honor of the memory of what Dr. Clark has contributed to the commission and to the Commonwealth of Kentucky, seconded by Ms. Hollingsworth. The vote by members and representatives present was unanimous.

There being no further business, Nelson adjourned the meeting in Dr. Clark's honor, at 11:35.